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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SEVEN

THE PEOPLE,

Plaintiff and Respondent,

v.

RAUL FIGUEROA,

Defendant and Appellant.

B265762

(Los Angeles County
Super. Ct. No. BA428265)

APPEAL from a judgment of the Superior Court of Los Angeles County. Henry Hall, Judge. Affirmed.

Kevin D. Sheehy, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Senior Assistant Attorney General, Paul M. Roadarmel, Supervising Deputy Attorney General, and Alison H. Chung, Deputy Attorney General, for Plaintiff and Respondent.

Defendant Raul Figueroa was charged with conspiracy to transport methamphetamine, and several related offenses. At trial, the prosecution presented wiretap evidence showing that Figueroa arranged multiple meetings with an individual driving a white BMW. After Figueroa arrived at one such meeting, he contacted the driver of the white BMW, warned him that he believed they were being followed and left the scene. Law enforcement conducting a surveillance of the meeting then stopped the white BMW, and found approximately thirty pounds of methamphetamine located inside a hidden compartment. Over Figueroa's objection, the prosecution also introduced a recording of a custodial interrogation in which he confessed that he had intended to take the methamphetamine, and transport it to a third party. Figueroa was found guilty of conspiracy to transport methamphetamine, transportation of methamphetamine and attempted possession of methamphetamine for sale.

On appeal, Figueroa argues that the incriminating statements he made during his custodial interrogation were involuntarily extracted through coercive conduct. We affirm, concluding that any error in admitting the statements was harmless beyond a reasonable doubt.

FACTUAL BACKGROUND

A. Summary of Events Prior to Trial

1. Events preceding Figueroa's arrest

During the course of a methamphetamine trafficking investigation, Special Agent Emilio Baca of the United States Drug Enforcement Agency obtained a warrant to wiretap the cell phone of a suspect who was later identified as defendant Raul Figueroa. On July 16, 2014, Baca's surveillance team intercepted a series of calls in which Figueroa directed another suspect, later identified as Jesus Garcia, to a meeting location where the parties could conduct an "unload." Figueroa informed Garcia he would be waiting in a "black Yukon truck"; Garcia stated that he was driving in a blue Camaro, and traveling with a white BMW. Garcia asked Figueroa if he would be bringing "tools" to the meeting, or whether there "[would] be a shop there." Figueroa responded that he was looking for his "sockets," and planned to bring them to the meeting.

Two days later, on July 18th, Baca's surveillance team intercepted a call at approximately 1:30 p.m. in which Garcia told Figueroa he was "going over to see [him] again." Figueroa provided Garcia directions to a Target store located near Figueroa's residence. Garcia agreed to meet Figueroa at the Target, and said he would call Figueroa when he arrived in the area. Based on this information, Baca, La Verne Police Sergeant Devon Harden and several other officers involved in the investigation began travelling to the Target store to set up a surveillance operation.

At 2:26 p.m., Garcia called Figueroa and instructed him to "come over to the Target"; Figueroa responded that he would "be there shortly." Minutes later, a law enforcement officer located outside Figueroa's home observed the defendant leave his residence in a black Yukon. At approximately 2:30 p.m., Special Agent Baca arrived at the Target store parking lot, where he saw a blue Camaro parked adjacent to a white BMW. Baca then saw a black Yukon truck enter the parking lot, and travel toward the Camaro and the BMW. The three cars began to travel in tandem, with the Yukon driving in front of the other two vehicles.

At 2:37 p.m., Figueroa called Garcia and asked whether he had seen anything "weird," continuing: "Right now, when we made a left. When we made a left did you see that black truck? [¶] . . . [¶] I'm telling you to check in front of you. . . . The same damn truck is there." At the time of the call, Sergeant Harden was following the suspects in a black truck. Immediately after the call, the Yukon exited the Target parking lot. The BMW repeatedly exited and reentered the Target parking lot, and then drove away. Harden began following the vehicle. He observed the driver make several lane changes, and drive straight through a traffic light from a left turn lane. Harden conducted a traffic stop of the BMW; Jesus Garcia was the sole occupant of the vehicle. Harden released Garcia at the scene, and impounded the BMW. During a subsequent search of the vehicle, Harden found a hidden compartment under the front seats that he accessed using a socket tool. The compartment contained 30 individually-wrapped packages of what appeared to be methamphetamine, each weighing approximately one pound.

About 10 or 15 minutes after the Yukon had left the Target store, the officer positioned outside Figueroa's home saw him return to his residence in a black Yukon. Later in the day, Baca and other officers conducted a search of Figueroa's residence. They found several cellophane-wrapped stacks of cash totaling approximately \$25,000, and three firearms, two of which were loaded.

2. Figueroa's custodial interrogation

On August 14, 2014, Baca and Riverside County Deputy Sheriff Rohn¹ conducted a recorded interrogation of Figueroa. After Figueroa denied having planned or participated in any drug transaction, Rohn told the defendant the officers knew he was lying because they had wiretapped his phone. Figueroa stated that he was going to be "honest" with the officers "because [he] was about to lose his family and everything." Figueroa then explained that his wife had told him a police officer (later identified as Rohn) had come to their house and threatened to "take [the] house and the kids" if she allowed Figueroa to return. After the incident, Figueroa's wife had forced him to leave their home.

Rohn told Figueroa he should tell the truth so "everybody [could] get on with their own lives," warning that if he failed to cooperate "more people [would] get pulled in. The girlfriend comes in, the wife comes in . . . it gets worse and worse. . . ." Rohn also warned Figueroa that if he did not admit his role in the drug transaction, the jury and the trial court would punish him with a harsher sentence. Figueroa, however, continued to deny any role in the drug transaction, asserting that he sold automobile rims and tires for a living, and had met with the owner of the white BMW to discuss those issues. Baca stated that the wiretap evidence "showed otherwise," and that Figueroa should "try to help himself out." Rohn then told Figueroa that law enforcement had observed what happened at the Target store, and knew Figueroa had not "end[ed] up with the dope."

In response, Figueroa said he "didn't do it" because he had gotten scared after seeing a "black truck." Figueroa stated that although he had traveled to the Target to get

¹ The record does not disclose Rohn's first name.

“it” for his neighbor, he had changed his mind because he did not “think it was safe.” Figueroa further explained that he was “going to take it from the guy and give it to the guy,” but was not aware how much “dope” was involved. He claimed that he was supposed to receive \$500 for his services. When questioned about the prior meeting with Garcia on July 16th, Figueroa stated “that time, I just guide him . . . to a place and they did whatever they did. . . .”

After Figueroa denied having engaged in any prior similar transactions, Rohn said they could be “done” if Figueroa would fully cooperate, stating: “[L]ike I told your wife last time, just to scare her, to get her to tell you to like stop, but you didn’t. . . . Can I take your kids? Can I take both kids right now? Yeah, I can. Will I? Prove to me that you want to get past this and I am not going to, okay? You see what I’m saying?” Rohn also told Figueroa the police would not “com[e] back to the house . . . as long as we get to the point where you’re being honest. . . . we’re not coming back. I’m not going to harass your family. I’m not going to come over here and drag them through everything for something that you were trying to do.” Finally, Rohn told Figueroa that although he would not “have an easy road” if he confessed, he would not be “deported” or “locked up for 15 [or] 20 years.”

Figueroa then admitted he was “just trying to make . . . big quick money with this idiot,” asserting that his neighbor was the person who was purchasing the drugs. He also explained that he was supposed to have picked up “about 25 pounds” of drugs, and had been involved in “moving the dope” for “about two weeks.” Upon further questioning, Figueroa admitted he had been involved in the transport of drugs for “a month and half,” had participated in multiple transactions involving “25 [or] 30 pounds” and had received a total of \$1,500 in payments. Rohn then commended Figueroa for his cooperation, stating that law enforcement would now stop “coming over . . . and flipping your house upside down.”

Figueroa requested that Rohn and Baca tell his wife the police would now leave the family alone, to which Rohn responded: “[Y]ou understand . . . having those guns in your house last time, you know, sawed off shotgun, those kids – we could have been

really bad . . . [W]hat we probably should have done is bring [Child Protective Services] in then and take care of all that but we opted not to. . . .” Figueroa repeated his request that the officers “tell [his wife] that it’s going to be over, that you guys are not . . . going to come back.” Figueroa explained that his wife and daughter “[could not] even . . . sleep,” and that his wife had “already lost like 12 pounds, . . . she’s going through a hard time. . . .”

Rohn then informed Figueroa he was “the one [who had] told” Figueroa’s wife that “if [the police came] back,” they would be “taking the kids, we’re taking the house, we’re taking everything.” Rohn confirmed “this is what I told her[,] . . . we’ll be back and we will come with [Child Protective Services] and we will take your kids and we’ll take the house,” adding “we could do it right now if, if we wanted to but we’re not.” Figueroa stated that his wife “went ballistic” after speaking with Rohn, and again requested that the officers tell her they “are not coming back.”

After several similar requests, Baca told Figueroa: “I’m going to tell her we’re not coming back but that’s not a promise okay? ”; “if we have another reason to come back, we will come back. All right? [¶] . . . [¶] Just don’t give us a reason.” Rohn then stated that the officers would contact Figueroa’s wife “to let her sleep at night,” but warned that they could “do everything that I told you,” and “absolutely would” do those things, if Figueroa “went down another road.”

B. Trial Court Proceedings

1. Summary of pretrial proceedings

On January 28, 2015, the District Attorney for the County of Los Angeles filed a five-count information against Figueroa that alleged, in relevant part: (1) conspiracy to commit the crime of transportation of methamphetamine for sale (count one) (Pen. Code, § 182, subd. (a); Health & Saf. Code, § 11379²); (2) possession of methamphetamine for sale (count two) (§ 11378); (3) transportation of methamphetamine for sale (count three)

² Unless otherwise noted, all further statutory citations are to the Health and Safety Code.

(§ 11379); and (4) possession of a firearm by a felon (count five³) (Pen. Code, § 29800, subd. (a)). Counts one through three included a special allegation asserting that the amount of methamphetamine at issue exceeded 20 kilograms in weight. (See § 11370.4, subd. (b)(4).)

Prior to trial, Figueroa moved to exclude the incriminating statements he had made during the custodial interrogation “based on . . . lack of voluntariness.”⁴ Figueroa’s counsel argued that the transcript of the interrogation showed Rohn had coerced the defendant into making incriminating statements by repeatedly threatening to take custody of his children and harass his family. The trial court explained that although it was “very concerned” about some of Rohn’s conduct, it believed Figueroa’s incriminating statements were “voluntary” because he had made them before Rohn engaged in any coercive conduct: “I think . . . had the order of things been a little bit different I would rule this was not voluntary. . . . There’s the back and forth with [the defendant] and [the defendant] makes statements that I think could be considered to be incriminating. And then when we get to the end of the tape or the end of the interview . . . there’s a fairly detailed discussion about coming back with Child Protective Services and taking the kids and taking the house. And had that portion of the conversation occurred before the statements were made I would exclude the whole business because once those statements are made anything that is said afterward is in my estimation not voluntary, but [Figueroa] doesn’t say anything after that. . . . [T]here is really nothing that is said after that is of an incriminating nature.”

In reply, defense counsel argued that before Figueroa had made his admissions, Rohn repeatedly threatened to return to Figueroa’s home and harass his family with additional searches if he refused to cooperate. The trial court, however, concluded that such conduct did not amount to unlawful coercion: “[T]hose statements by the officers

³ Count four of the information, which alleged “false compartment activity” (§ 11366.8, subd. (a)), was dismissed prior to trial.

⁴ Defense counsel raised several additional objections to the admission of the interrogation that are not relevant to this appeal.

do skirt right up to the line. . . . They skirted right up to the line. . . . But the police are allowed significant latitude in terms of encouraging somebody to be truthful. The Child Protective Services comment goes over that, but I think up to then it was aggressive interviewing and certainly pushed the boundary as far as it would go. And I was concerned about a lot of it . . . , but . . . those statements about having to . . . come back and search [the] house over and over again, . . . are truthful statements about what is going to happen if the investigation continues. There was not a threat to take the children away. That comes after the [incriminating] statements were made.” The court then ruled that the prosecution could present the entire interrogation at trial.

2. Summary of trial

During opening statements, the prosecutor informed the jury he would be introducing wiretap evidence demonstrating that Figueroa was “guilty of all the crimes charged.” According to the prosecutor, the wiretap evidence would show that on July 18, 2014, Figueroa contacted the driver of a white BMW, and provided him directions to a meeting spot. The recorded conversations would also show that after Figueroa arrived at the meeting spot, he saw a police surveillance vehicle, which caused him to abandon the meeting and return to his home. The prosecutor stated he would present additional evidence showing that law enforcement later found approximately 30 pounds of methamphetamine inside the white BMW, and approximately \$25,000 cash hidden in a water cooler in Figueroa’s house. The prosecutor did not reference Figueroa’s interrogation. Figueroa declined to make an opening statement.

The prosecution’s primary witness, Emilio Baca, testified that he had obtained a warrant to wiretap a cell phone associated with the number 323-359-1489. Baca explained that he had initially identified Figueroa as the owner of the cell phone based on “GPS ping data” showing the phone was located at a residence where surveillance officers had observed Figueroa. The surveillance officers had also observed Figueroa driving the same make and model car, a black Yukon truck, as the person whose voice was heard on the intercepted calls. Baca further testified that Figueroa was in possession

of the wiretapped phone when police arrested him on August 14, 2014. Baca also testified that he was familiar with Figueroa's voice, and believed he was the speaker on each of the intercepted calls.

After describing the evidence that led law enforcement to believe Figueroa was the owner of the wiretapped phone, Baca read a transcript of the intercepted calls (summarized above). He also provided his opinion as to the meaning of certain terms that were used during those calls. First, Baca explained that the term "unload," which Garcia had used during a call with Figueroa on July 16th, was frequently used by drug traffickers in reference to the "unload[ing of] narcotics." Second, Baca testified that the term "sockets," which Figueroa had used during a July 16th call, referenced "the required sockets" that were necessary to "access" a hidden drug compartment.

Baca also testified as to what he had observed at the Target store parking lot on July 18th, explaining that: (1) when he arrived at the Target store, he saw a blue Camaro parked adjacent to a white BMW; (2) a black Yukon truck then pulled into the parking lot, and approached the other two vehicles; (3) the three vehicle began traveling in tandem, with the Yukon truck in the lead; (4) while this was occurring, a member of the surveillance team notified Baca that Figueroa had just called Garcia to warn him about a black truck that was following them; (5) shortly after the intercepted call, Baca saw the black Yukon leave the Target; (6) the BMW then repeatedly exited and reentered the Target parking lot, which Baca believed to be counter-surveillance maneuvers; (7) the BMW then left the premises, and was stopped by Sergeant Harden.

Baca also testified that on July 18th, he had participated in a search of Figueroa's residence. According to Baca, officers found several stacks of cash totaling approximately \$25,000 that had been vacuum-sealed in cellophane and placed inside a water cooler. Baca explained that based on his experiences in prior drug investigations, drug traffickers wrapped cash in cellophane to "conceal odors that may alert . . . detection canines." Baca admitted, however, that law enforcement did not find any large quantities of narcotics in Figueroa's home, nor had they found any other items that appeared to be related to narcotics trafficking.

After Baca had testified about the content of the intercepted calls and the events that occurred on July 18th, the prosecution asked the following hypothetical question: “There’s one driver in [a] vehicle. Upon search of it there are 30 pounds of what is found to be methamphetamine that is located in secret compartments within the vehicle underneath the front seats. . . . The 30 pound[s] of methamphetamine are packaged in approximately one-pound quantities . . . Based on th[ose] facts, do you have an opinion as to whether the 30 pounds of methamphetamine was possessed for the purpose of sale?” Baca responded that “the quantity, the packaging, method of concealment, those factors would allow me to opine that the . . . possession is for sale.” Baca further testified that 30 pounds of methamphetamine would provide approximately 750,000 individual dosages of the drug.

The prosecutor then asked Baca a second hypothetical in which he was to assume that the driver of the vehicle carrying the 30 pounds of methamphetamine “calls a driver in a second vehicle, that the two cars are briefly seen driving in tandem immediately prior to the search of the first car. Under those assumed facts, do you have an opinion as to the purpose for which the driver of the second car was driving in tandem with the car that contained the methamphetamine?” Baca stated that based on the quantity of the drugs, the manner in which the drugs were concealed, and the communications between the drivers, “it’s my opinion that the two parties were there to make a transaction or to facilitate the transfer of the narcotics”

The prosecution also used Baca to authenticate the recording of Figueroa’s custodial interrogation and a transcript of the interview. Baca testified that the recording and transcript accurately portrayed the interrogation he had had conducted with Deputy Rohn on August 14th. The jury was then played a recording of the entire interrogation, and provided a transcript.

The prosecution called three additional law enforcement personnel who were involved in the investigation. Jeanette Duran-Dingillo, a sergeant in the Los Angeles County Sheriff’s Department, testified that shortly after law enforcement had intercepted a call in which Figueroa told Garcia he was leaving for the Target store, she observed

Figueroa leave his residence in a black Yukon truck. Sergeant Duran-Dingillo further testified that 10 or 15 minutes after law enforcement intercepted another call in which Figueroa informed Garcia he thought they were being followed, she saw Figueroa return to his residence driving a black Yukon.

Sergeant Devon Harden testified that he had been present at the Target store on July 18, 2014, and confirmed he was driving a black pickup truck during the surveillance operation. Like Baca, Harden testified that when he arrived at the Target store, he saw a blue Camaro and white BMW parked next to each other. He then saw a black Yukon drive toward the two vehicles, drawing within 20 feet of them. Harden also confirmed that after the black Yukon had left the premises, he followed the white BMW, observed the vehicle engage in what he believed to be counter-surveillance maneuvers and and conducted a traffic stop. Harden stated that Garcia was the sole occupant of the vehicle, which was impounded after the traffic stop. During a subsequent search of the vehicle, Harden discovered two hidden compartments located under the front seats. Harden stated that he had needed to use a socket to access the compartments, which contained 30 packages of what appeared to be methamphetamine. Harden further testified that during the search of Figueroa's home, law enforcement recovered a loaded .22 caliber rifle, a loaded .357 caliber pistol and a sawed-off shotgun.

Finally, the prosecution called David Hong, a criminalist at the Los Angeles County Sheriff's Department Scientific Services Bureau. Hong testified that the substance recovered from the white BMW tested positive for methamphetamine, and that the total weight of the 30 packages was more than 10 kilograms, but less than 20 kilograms.

Figueroa stipulated that he had previously been convicted of a felony. He elected not to present any evidence in his defense.

3. Jury instructions and closing statements

Prior to closing statements, the court provided instructions to the jury that included an aiding and abetting instruction in accordance with CALCRIM No. 400: "A person

may be guilty of a crime in two ways. One, he or she may have directly committed the crime. I will call that person the perpetrator. Two, he or she may have aided and abetted a perpetrator, who directly committed the crime. A person is guilty of the crime whether he or she committed it personally or aided and abetted the perpetrator.” The court also instructed the jury on the individual elements of aiding and abetting in accordance with CALCRIM No. 401.⁵

After instructing the jury on the elements of the four charged crimes, the court further instructed that on counts two and three, possession of methamphetamine for sale and transporting methamphetamine for sale, the jury could find the “lesser included offense[s]” of “attempted” possession of methamphetamine for sale and “attempted” transport of methamphetamine for sale. The court instructed that to prove these lesser included offenses, the People had to prove that Figueroa took a direct but ineffective step toward committing the crime of possession for sale and/or transport for sale, and had in fact intended to commit those crimes. The court also instructed that a “direct step is one that goes beyond planning or preparation and shows that a person is putting his or her plan into action.”

Following the instructions, the court invited the parties to present a closing statement. The prosecutor argued that the evidence showed Figueroa was guilty of possession and transportation of methamphetamine for sale (counts two and three) under the “aider and abettor” theory of criminal liability. Specifically, the prosecutor argued the wiretap evidence demonstrated that: (1) Jesus Garcia had directly committed the crimes of transportation of methamphetamine for sale and possession of

⁵ Specifically, the court instructed the jury as follows: “To prove that the defendant is guilty of a crime based on aiding and abetting that crime, the People must prove that: [¶] 1. The perpetrator committed the crime; [¶] 2. The defendant knew that the perpetrator intended to commit the crime; [¶] 3. Before or during the commission of the crime, the defendant intended to aid and abet the perpetrator in committing the crime; AND [¶] 4. The defendant’s words or conduct did in fact aid and abet the perpetrator’s commission of the crime. [¶] Someone aids and abets a crime if he or she knows of the perpetrator’s unlawful purpose and he or she specifically intends to, and does in fact, aid, facilitate, promote, encourage, or instigate the perpetrator’s commission of that crime.”

methamphetamine for sale; (2) Figueroa was aware of these crimes; (3) Figueroa had intended to aid those crimes by facilitating an exchange of the methamphetamine; and (4) Figueroa had in fact instigated those crimes during the intercepted calls with Garcia.

The prosecutor argued that a similar analysis applied to count one, conspiracy to commit the crime of transportation of methamphetamine for sale, asserting the evidence showed: (1) Figueroa “intended to agree and did agree with Jesus Garcia to commit the crime of transportation of methamphetamine”; (2) “at the time of the agreement the defendant and Garcia intended that one of them would commit the crime of transportation of methamphetamine”; (3) Figueroa or Garcia “committed at least one . . . alleged overt act[] to accomplish the crime of transportation of methamphetamine,” which included traveling to the Target store parking lot. The prosecutor then reiterated that under the aider and abettor and conspiracy theories of liability, the People were not required to show the defendant had ever taken physical possession of the drugs in question. Instead, they were required to prove only that Figueroa had intended to aid Garcia in transporting and possessing drugs for sale.

In Figueroa’s closing statement, defense counsel did not dispute whether Figueroa was the person heard speaking on the wiretap recordings. Counsel argued, however, that the jury should not accept Baca’s interpretation of the meaning of the words that were exchanged during those conversations. According to defense counsel, although Baca had interpreted the terms “unload” and “tools” to mean that the parties were planning a drug transaction, the jury should independently weigh whether the prosecution had proven those facts beyond a reasonable doubt.

Defense counsel also argued the jury should discount the incriminating statements Figueroa had made during his custodial interrogation because Rohn had threatened his family, and suggested Figueroa would receive a reduced sentence if he cooperated. Although counsel conceded that the prosecution had proven count four (felon in possession of a firearm), she argued that the evidence did not show beyond a reasonable doubt that Figueroa had intended to cause the transportation, possession or sale of any methamphetamine.

The jury found Figueroa guilty of conspiracy to transport methamphetamine for sale (count one), transportation of methamphetamine for sale (count three) and felon in possession of a firearm (count five). On count two, the jury found him guilty of the lesser included offense of attempted possession of methamphetamine for sale. For counts one through three, the jury also found true a special allegation that the respective crimes involved more than 10 kilograms of methamphetamine. (See § 11370.4, subd. (b)(3).)

The court sentenced Figueroa to an aggregate sentence of 13 years eight months in state prison.⁶

DISCUSSION

Figueroa argues the trial court should have granted his motion to exclude the custodial interrogation. Figueroa contends the interrogation transcript demonstrates that all of the admissions he made during the interview were involuntarily extracted through “coercive” questioning techniques.

A. Summary of Law Governing Involuntary Confessions

“Both the state and federal Constitutions bar the prosecution from introducing a defendant’s involuntary confession into evidence at trial. [Citations.] “A statement is involuntary if it is not the product of “a rational intellect and free will.” [Citation.] The test for determining whether a confession is voluntary is whether the defendant’s ‘will was overborne at the time he confessed.’” [Citations.] [¶] “A confession may be found involuntary if extracted by threats or violence, obtained by direct or implied promises, or secured by the exertion of improper influence. [Citation.] Although coercive police activity is a necessary predicate to establish an involuntary confession, it ‘does not itself compel a finding that a resulting confession is involuntary.’ [Citation.] The statement

⁶ The court’s aggregate sentence included the following: the middle term of three years in state prison on count one (conspiracy to commit the crime of transportation of methamphetamine for sale), a 10-year prison enhancement under section 11370.4, subdivision (b)(3) based on the quantity of methamphetamine involved; and a consecutive eight-month sentence on count five (felon in possession of a firearm). The court also sentenced Figueroa to 12 years and 13 years in state prison on counts two and three, but stayed both sentences pursuant to Penal Code section 654.

and the inducement must be causally linked. [Citation.]’ [Citation].’ [Citation.] A confession is not rendered involuntary by coercive police activity that is not the ‘motivating cause’ of the defendant’s confession.” (*People v. Linton* (2013) 56 Cal.4th 1146, 1176 (*Linton*); see also *People v. Cahill* (1993) 5 Cal.4th 478, 509 (*Cahill*).)

“‘Whether a confession was voluntary depends upon the totality of the circumstances.’ [Citations.] ‘On appeal, we conduct an independent review of the trial court’s legal determination and rely upon the trial court’s findings on disputed facts if supported by substantial evidence.’ [Citation.] The facts surrounding an admission or confession are undisputed to the extent the interview is tape-recorded, making the issue subject to our independent review.” (*Linton, supra*, 56 Cal.4th at p. 1176.)

The erroneous admission of an involuntary confession is reviewed for prejudice under the standard enunciated in *Chapman v. California* (1967) 386 U.S. 18. (See *Cahill, supra*, 5 Cal.4th at p. 509; *People v. Johnson* (1993) 6 Cal.4th 1, 33 (*Johnson*), disapproved on other grounds in *People v. Rogers* (2006) 39 Cal.4th 826, 879.) The *Chapman* standard requires “the beneficiary of a constitutional error to prove beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained.” (*Chapman, supra*, 386 U.S. at p. 24; *Johnson, supra*, 6 Cal.4th at p. 33 [“a conviction may be affirmed despite the erroneous admission of an involuntary confession, when the record shows that the admission of the confession was harmless beyond a reasonable doubt”].) “To say that an error did not contribute to the verdict is . . . to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed in the record. Thus, to say that [the error] did not contribute to the verdict is to make a judgment about the significance of the [error] to reasonable jurors, when measured against the other evidence considered by those jurors independently of the [error].” (*Yates v. Evatt* (1991) 500 U.S. 391, 403, disapproved on other grounds in *Estelle v. McGuire* (1991) 502 U.S. 62, 72, fn. 4; see also *People v. Neal* (2003) 31 Cal.4th 63, 86 (*Neal*) [quoting and citing *Yates*].)

“Confessions, as a class, will almost always provide persuasive evidence of a defendant’s guilt and as such, ‘confessions often operate “as a kind of evidentiary

bombshell, which shatters the defense.” [Citation.] Therefore, the erroneous admission of a confession ‘is much more likely to affect the outcome of a trial than are other categories of evidence, and thus is much more likely to be prejudicial under the traditional harmless-error standard.’ [Citation.]” (*People v. Gonzalez* (2012) 210 Cal.App.4th 875, 884 [citing and quoting *Cahill, supra*, 5 Cal.4th at p. 503]; see also *Neal, supra*, 31 Cal.4th at p. 86.) Our Supreme Court has nonetheless “acknowledged . . . that the erroneous admission of any given confession ‘might be found harmless, for example, (1) when the defendant was apprehended by the police in the course of committing the crime, (2) when there are numerous, disinterested reliable eyewitnesses to the crime whose testimony is confirmed by a wealth of uncontroverted physical evidence, or (3) in a case in which the prosecution introduced, in addition to the confession, a videotape of the commission of the crime [citation.]’” (*Neal, supra*, 31 Cal.4th at p. 86.) “As these examples suggest, although in some cases a defendant’s confession will be the centerpiece of the prosecution’s case in support of a conviction, in many instances it will be possible for an appellate court to determine with confidence that . . . the exclusion of the confession would [not] have affected the result.” (*Cahill, supra*, 5 Cal.4th at p. 505.)

B. Any Error in Admitting the Statements Was Harmless

Figueroa argues that Deputy Rohn coerced him into admitting his role in the drug transaction by: (1) threatening to detain Figueroa’s children and harass his family; (2) making improper promises of leniency, and (3) intentionally misrepresenting his “prison time exposure.”

The Attorney General does not dispute that some of Rohn’s statements, particularly those regarding the detention of Figueroa’s children, were coercive in nature. She contends, however, that the transcript of the interrogation shows Rohn’s threats were “not a motivating cause of any incriminating response because [Figueroa made] his admissions . . . before the deputy’s statements.” Figueroa disagrees, arguing that the transcript shows Rohn made threats to Figueroa’s wife about taking custody of their children prior to the interrogation; that Rohn made similar threats to Figueroa during the

interrogation; and that Figueroa chose to cooperate, at least in part, so that law enforcement would stop threatening his wife and family.

The threats Deputy Rohn made to Ramos and his wife regarding their children were clearly coercive in nature. (See *Lynum v. State of Illinois* (1963) 372 U.S. 528, 534 [confession involuntary where it was “made only after the police had told [the defendant] that state financial aid for her infant children would be cut off, and her children taken from her, if she did not ‘cooperate’”]; *People v. Rand* (1962) 202 Cal.App.2d 668, 674 [confession involuntary where police threatened to take defendant’s wife “to jail” and his children to “juvenile”]; see also *People v. Medina* (Col. 2001) 25 P.3d 1216 [confession involuntary where interviewing officer threatened that defendant’s child would be taken from his wife unless he cooperated].) Whether Rohn’s threats were a “motivating cause” of any of the admissions Ramos made during the interrogation is a more difficult question. The transcript shows that some of Ramos’s statements regarding his role in the drug transaction, including his admission that he was paid for his services, did occur before Rohn made any reference to Ramos’s children. Other portions of the transcript, however, clearly imply that Ramos knew investigating officers had made threats to his wife before the interrogation, and that his decision to cooperate was based in part on a desire to protect his family.

For the purposes of this appeal, we need not resolve whether Rohn’s coercive conduct was a motivating cause of any of Figueroa’s admissions because we conclude any error in admitting his confessions was harmless beyond a reasonable doubt. At trial, the prosecution provided abundant evidence apart from the interrogation that showed Figueroa intended to participate in a drug transaction when he traveled to the Target store on July 18th. First, the prosecution provided extensive evidence that Figueroa was the owner of the wiretapped cell phone, and was the individual who spoke to Garcia on each of the intercepted calls.⁷ Baca testified that “GPS ping data” indicated the cell phone was located at the address where Figueroa resided, and that Figueroa was in possession of the

⁷ Figueroa has not disputed that the prosecution established Garcia was the other speaker on the intercepted phone calls.

wiretapped phone when he was arrested. Baca further testified that he was familiar with Figueroa's voice, and believed he was the speaker on the intercepted calls. The prosecution provided additional evidence showing Figueroa drove the same make and model vehicle (a black Yukon truck) as the speaker on the intercepted calls. In addition, a surveillance officer saw Figueroa leaving his home in a black Yukon shortly after law enforcement had intercepted a call in which the speaker told Garcia he was leaving to meet Garcia at a nearby Target. Minutes after Figueroa left, Baca and Harden saw a black Yukon arrive at a Target near Figueroa's residence. Figueroa was subsequently observed arriving back at his home in a black Yukon truck shortly after Baca had seen a black Yukon leave the Target store. Considered together, this evidence provided overwhelming proof that Figueroa was in fact the person who spoke to Garcia on the intercepted calls, and was the driver of the black Yukon truck that arrived at the Target.

Second, the content of the intercepted telephone conversations, combined with the testimony of multiple law enforcement officers regarding the events they had observed on July 18th, provided extensive evidence that Figueroa intended to facilitate or otherwise participate in a drug transaction with Garcia. In sum, the wiretapped conversations and concurrent observations of law enforcement showed that: (1) on July 16th, Figueroa arranged to meet with Garcia, who was traveling with a blue Camaro and a white BMW, to conduct an "unload"; (2) Garcia asked Figueroa to bring "tools" to the meeting, and Figueroa confirmed he would bring a "socket"; (3) on July 18th, Figueroa arranged to meet with Garcia again at a Target store near his residence; (4) Figueroa arrived at the Target store in his Yukon truck, and approached a blue Camaro and a white BMW that Garcia was driving; (5) after Figueroa passed within 20 to 30 feet of the Camaro and the BMW, those vehicles began to follow Figueroa's Yukon; (6) Figueroa then called Garcia to warn him that a black truck appeared to be following them; (7) at the time of that call, Sergeant Harden was following the suspects in a black truck; (8) immediately after the call, Figueroa left the meeting and returned to his residence; (9) the BMW, driven by Garcia, remained in the vicinity of the Target, repeatedly exiting and reentering the parking lot; (10) Garcia then left the Target, engaged in additional evasive driving

techniques, and was stopped by Sergeant Harden; (11) during a search of Garcia's BMW, Harden used a socket to access a hidden compartment underneath the front seats; (12) the compartment contained 30 individually-packaged pounds of methamphetamine, which equaled over 750,000 individual dosages of the drug; and (13) officers searched Figueroa's home the same day he had traveled to the Target, and found a substantial amount of cash stored in a manner consistent with drug trafficking activities, and multiple loaded firearms. Based on this evidence, it is simply not believable that Figueroa arranged to meet with Garcia for any purpose other than to engage in a transaction that involved the methamphetamine recovered from Garcia's vehicle.

Although we recognize that confessions are, as a class, a persuasive form of evidence that is more likely to affect the outcome of a trial than many other categories of evidence (see *Neal, supra*, 31 Cal.4th at p. 86), the quality and quantity of additional evidence of guilt presented in this case convinces us that the jury would have reached the same verdict even in the absence of the interrogation. As summarized above, that evidence included surreptitiously-recorded conversations and the uncontroverted eyewitness testimony of multiple law enforcement officers, which is the same type of evidence our Supreme Court has described in explaining when an erroneously-admitted confession might be deemed harmless. (*Ibid.* [harmlessness might properly be found where, for example, the prosecution introduces a videotape of the commission of the crime, when the defendant was apprehended by the police in the course of committing the crime or when there is uncontroverted testimony from multiple reliable witnesses that is supported by physical evidence].) Moreover, Figueroa did not present any conflicting evidence as to whether he was the speaker on the intercepted calls, or the driver of the black Yukon that arrived at the Target. He also provided no alternative explanation as to why he intended to meet with Garcia at the Target, nor did he attempt to explain any of his other incriminating conduct, which included bringing a "socket" to his first meeting with Garcia, warning Garcia that he believed they were being followed and possessing \$25,000 in vacuum-packed cash. Given the overwhelming evidence of Figueroa's guilt, and the lack of any innocent explanation for his conduct, we conclude that the exclusion

of the custodial interrogation would have had no effect on the jury's finding that he and Garcia conspired to transport methamphetamine; that Figueroa aided and abetted the transportation of methamphetamine; and that Figueroa took a direct, but ultimately ineffective step toward possessing methamphetamine for the purposes of sale.

Figueroa, however, contends the erroneous admission of his confessional statements cannot be deemed harmless. First, he asserts that in the absence of his confession, "the prosecution's evidence that [he] was the person inside the Yukon in the parking lot with the white BMW . . . on July 18 was circumstantial and questionable." He argues that the only evidence the prosecution provided in support of this finding was: (1) a surveillance officer's testimony that she saw Figueroa leave his home in a black Yukon on July 18th; and (2) Baca's "claim [that he]. . . recognize[d] the recorded . . . voice as that of [Figueroa] on the intercepted calls." According to Figueroa, "[t]he credibilities of Special Agent Baca as a voice identifier and of the surveillance officer as a percipient witness were issues for the jury."

Contrary to Figueroa's assertions, however, our summary above shows the prosecution introduced substantially more evidence establishing he was in fact the person who drove the black Yukon to the Target store. First, Baca did not merely testify that he believed Figueroa to be the speaker on the intercepted phone calls based on voice recognition. In addition to recognizing Figueroa's voice, Baca testified that Figueroa possessed the phone at the time of his arrest, and that GPS data indicated the phone was located at the address where Figueroa lived. Second, the prosecution presented extensive eyewitness testimony corroborating Figueroa's identity as the driver of the black Yukon that arrived at the Target: shortly after law enforcement intercepted a call in which Figueroa told Garcia he was leaving for the Target, a surveillance officer saw him leave his residence in a black Yukon; minutes later, officers observed a black Yukon arrive at the Target; Figueroa was also seen arriving back at his residence in a black Yukon soon after law enforcement saw a black Yukon leave the Target. Based on the record as a whole, we conclude beyond a reasonable doubt that the jury would have found Figueroa was the driver of the black Yukon even if the interrogation had been excluded.

Figueroa also argues that “without [his] admissions in the interrogation, there would have been holes in the police investigation regarding [his] role [in] . . . the July 16 and July 18 events, [his] awareness of the presence or amounts of drugs being transacted then, the amount of his compensation for any transaction, and appellant’s involvement in more large-scale transactions.” Figueroa has not, however, identified what specific “holes” in the investigation to which he is referring. As summarized above, the wiretapped calls, combined with the observation’s of multiple officers, provided overwhelming evidence that he traveled to the Target store with the intent to engage in a drug transaction with Garcia. None of the crimes at issue required the prosecution to prove Figueroa knew the specific amount of drugs Garcia had in his car,⁸ or the amount Figueroa was compensated for his role in the transaction. Although Figueroa’s admissions on these issues certainly supported a finding of guilt on the charged crimes, we conclude beyond a reasonable doubt that the jury’s findings would have been no different even in the absence of his admissions.

⁸ The jury did find true a special allegation that the amount of methamphetamine at issue exceeded 10 kilograms, thereby subjecting Ramos to a 10-year sentence enhancement under Health and Safety Code section 11370.4, subdivision (b)(3). That weight enhancement, however, did not require the prosecution to prove Ramos had knowledge of the amount of drugs at issue. (See *People v. Meza* (1995) 38 Cal.App.4th 1741, 1748 [“[S]ection 11370.4 . . . requires only a conviction [of one of the crimes enumerated in the statute]. Then, where ‘the substance exceeds 10 pounds,’ the enhancement is imposed. No special intent or knowledge is required under the statute . . .”].) Ramos was convicted of, among other things, violating Health and Safety Code section 11379 (transportation of methamphetamine for sale), which is one of the crimes enumerated in section 11370.4, subdivision (b). He was therefore “strictly liable for any weight enhancement regardless of [his] knowledge of the quantity.” (*Id.* at p. 1748.)

DISPOSITION

The judgment is affirmed.

ZELON, J.

We concur:

PERLUSS, P. J.

KEENY, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.